

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Filed: July 14, 2017

Ms. Rebecca Leah Strauss
Miller Johnson
100 W. Michigan Avenue
Suite 200
Kalamazoo, MI 49007

Re: Case No. 17-1078, *Todd Courser v. Keith Allard, et al*
Originating Case No. : 1:16-cv-01108

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Matthew S. DePerno
Mr. Thomas Dorwin

Enclosure

No. 17-1078

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TODD COURSER,)
)
Plaintiff-Appellant,)
)
v.)
)
KEITH ALLARD, et al,)
)
Defendants,)
)
VINCENT KRELL,)
)
Defendant-Appellee.)
)

FILED
Jul 14, 2017
DEBORAH S. HUNT, Clerk

O R D E R

Before: NORRIS, GIBBONS, and SUTTON, Circuit Judges.

Plaintiff Todd Courser appeals the dismissal with prejudice of his claims against Defendant Vincent Krell. Krell moves to dismiss the appeal for lack of jurisdiction. Courser opposes the motion to dismiss.

Courser filed in the district court a notice of voluntary dismissal without prejudice of all of his claims in this action under Federal Rule of Civil Procedure 41(a)(1)(A)(i). On December 19, 2016, the district court held that the Rule 41(a)(1)(A)(i) dismissal was not effective with respect to Krell because he had previously filed a motion for summary judgment. The district court construed Courser's motion as a motion for voluntary dismissal by court order under Rule 41(a)(2). The district court ordered the claims against Krell dismissed with prejudice and the case closed based on Courser's Rule 41(a)(1) motion. Krell argues that the December 19 order is

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not a final, appealable judgment because the dismissal without prejudice did not resolve the claims against the other defendants.

Pursuant to *Hicks v. NLO, Inc.*, 825 F.2d 118, 120 (6th Cir. 1987), a dismissal without prejudice of all remaining claims in an action, with the approval of the court, is a final judgment that permits a party to appeal a prior, involuntary adverse ruling. The *Hicks* court held “that plaintiff’s dismissal with the concurrence of the court of the only count of her complaint which remained unadjudicated imparted [finality] to the District Court’s earlier order granting summary judgment.” *Id.*

Krell relies on cases from other circuits holding that orders dismissing some claims with prejudice and others without prejudice are not final, appealable orders. These decisions, however, are contrary to the holding of *Hicks*. *Hicks* is binding authority that should not be overruled in the absence of an inconsistent decision by the Supreme Court or an en banc decision of this court. See *United States v. Elbe*, 774 F.3d 885, 891 (6th Cir. 2014); *Salmi v. Sec’y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985).

Accordingly, the motion to dismiss is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk